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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 364

HARRY LERMAN, MYER LERMAN, and SAMUEL LERMAN, Co-partners trading as LERMAN BROTHERS, *Petitioners*;

v.

FRUIT PROCESSORS, INC., a corporation, *Respondent*.

REPLY BRIEF OF PETITIONERS.

ROBERT L. WRIGHT,
CARL W. BERGERT,
Attorneys for the Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The sole purpose of this reply is to direct attention to a material misstatement of fact, made for the first time in respondent's brief in opposition to the petition for certiorari. At page 6 of that brief, counsel erroneously assert that the unpaid drafts were sent "with Bill of Lading attached." This misstatement is repeated at page 7 when they describe the warehoused merchandise as "subject to the sight drafts with the Bill of Lading attached."

No bill of lading was issued for this merchandise because the only shipments were to the Chicago warehouse (R. 62-64) which held the merchandise under non-negotiable receipts issued to the respondent (R. 24-29). The sight drafts for this merchandise were accompanied by warehouse transfer orders and respondent proposed to make delivery and

pass title at Chicago only *after* the drafts were paid by petitioners' Washington bank (R. 70-71).[1] By now recklessly asserting that bills of lading were attached to the drafts, the respondent, in effect, concedes that the Act only penalizes a rejection of a sight draft which is accompanied by a document which will vest title in the buyer simultaneously with payment of the draft.

Neither the Court of Appeals, the District Court, the Secretary, nor any witness suggested that any bill of lading for the merchandise covered by the unpaid drafts was ever sent to petitioners or their bank. The statement in counsel's brief that bills of lading for this merchandise accompanied the sight drafts has no support in the record made below. There would be no occasion for its insertion and repetition in respondent's brief in this Court if respondent felt that the petition could be successfully opposed on the basis of either the facts found in the Court of Appeals' opinion or the record.

Respectfully submitted,

ROBERT L. WRIGHT,
CARL W. BERUEFFY,
Attorneys for the Petitioners.

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[1] As we pointed out in our petition for rehearing (R. 170-171), the Court of Appeals erroneously found that each draft was "accompanied by a Chicago warehouse receipt" (R., 161). The contract of sale (R., 142) made no provision for delivery at Chicago by any method.